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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

KONSTANTIN VLADIMIROVICH
KAPTSOV,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 02-70755

INS No. A78-678-867

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted March 12, 2003
San Francisco, California

Before: LEAVY, RYMER, and PAEZ, Circuit Judges.

Konstantin Vladimirovich Kaptsov (Kaptsov) petitions for review from the dismissal of his appeal by the Board of Immigration Appeals (BIA) denying his request for asylum, withholding of removal, and relief under the Convention

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Against Torture. We have jurisdiction pursuant to INA § 242, 8 U.S.C. § 1252, and we deny Kaptsov's petition.

I

Kaptsov argues he is eligible for asylum because of a well-founded fear of persecution in Russia on account of his desertion from the Russian army over his opposition to Russia's military involvement in Chechnya. While Kaptsov's subjective fear that he will be persecuted is genuine, the record shows that he simply stopped showing up for work without telling Russian officials why he had done so. There is no basis for concluding that the Russian military would have perceived, or would classify, his desertion as an expression of political opinion or as a desire to stay politically neutral. Although Kaptsov testified that the military came looking for him at his parents' house, officials sought Kaptsov to require him to complete his military commitment. Kaptsov lived and worked in the area for five years without difficulty. He obtained a Russian passport and student visa because he wanted to continue his education in the United States. Kaptsov's testimony shows that he initially intended to return to Russia because he believed that conditions would improve after the elections, but that they have deteriorated instead.

Kaptssov relies on *Navas v. INS*, 217 F.3d 646 (9th Cir. 2000), to argue that Russian authorities would impute a political opinion to him, but *Navas* is factually distinguishable, as are other cases where imputation of political opinion is based on persecution of family members. *Cf., e.g., Ramirez Rivas v. INS*, 899 F.2d 864, 865-66 (9th Cir. 1990) (six cousins, two brothers, two uncles and a half-brother who had engaged in guerilla activities had been tortured and imprisoned, and the petitioner's politically neutral father had been shot after she left the country); *Mgoian v. INS*, 184 F.3d 1029, 1033 (9th Cir. 1999) (many relatives were victims of attacks by the government and surviving family had to leave under threat); *Rodriguez v. INS*, 841 F.2d 865, 870-71 (9th Cir. 1988) (brutal murders of father and two brothers). Despite the fact that Kaptssov's application states that his brother was arrested for refusing to kill innocent civilians in Chechnya, and that his father lost his job as a police captain for disagreeing with a superior about the Chechan war, Kaptssov's testimony indicates that he does not know whether his brother was arrested and that his father cannot work because he has tuberculosis. Further, Kaptssov failed to explain in his testimony why his father had a conflict with his superiors.

In sum, the record lacks evidence that persecution on account of political opinion, or imputed political opinion, is a reasonable possibility. *Singh v. Ilchert*,

63 F.3d 1501, 1506 (9th Cir. 1995). Substantial evidence supports the BIA's conclusion, and a contrary finding is not compelled. *See Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997) (noting that petitioner must show that the evidence compels a reversal of the BIA).

II

Because Kaptsov failed to establish the lower statutory burden for asylum, he necessarily failed to demonstrate eligibility for withholding of deportation. *See Pedro-Mateo v. INS*, 224 F.3d 1147, 1150 (9th Cir. 2000) (citing *Ghaly v. INS*, 58 F.3d 1425, 1429 (9th Cir. 1995)).

III

Kaptsov argues that he is eligible for protection under the Convention Against Torture (Convention) because under the Convention he need not show a nexus between his probable torture and any statutory ground for asylum. Regardless, as the BIA concluded, Kaptsov failed to show that it is more likely than not he would be tortured if he returned to Russia. *See* 8 C.F.R. § 208.16(c)(2) (noting that burden of proof is on petitioner seeking withholding of removal under the Convention to show that it is more likely than not he or she would be tortured

if removed to proposed country of removal). Kaptsov remained in Russia for five years following his desertion without being apprehended or subjected to penalty, and there is substantial evidence that only some criminal proceedings have been initiated against deserters.

PETITION DENIED.